

h THE *hva*
SPORTSMAN'S AND GAMEKEEPER'S
POCKET-BOOK;

OR, A
COMPREHENSIVE AND FAMILIAR TREATISE
ON THE

G A M E L A W S.

COMPRISING, AMONGST OTHER MATTERS,
ALL THE STATUTES, AND RESOLUTIONS
OF THE COURTS, RELATING TO
HARES, RABBITS, GROUSE, FISH,
AND OTHER GAME.

TOGETHER WITH
Some general and particular Remarks tending to
explain their Import, and facilitate their Con-
struction.

TO WHICH ARE ALSO ADDED,
The Mode of recovering *Penalties* under the GAME
LAWS,

The Law concerning *Trespasses* in the *Pursuit of Game*,
AND

The GENERAL LAW relating to DOGS.

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INTRODUCTION.

AT the first distribution of things, as mentioned in the sacred writings, the all-bountiful Creator gave to *man*,
“Dominion over the fish of the sea, over
“the fowl of the air, and over every living thing that moveth upon the face of
“the earth.” As this appears to have been a *general* and *unqualified* donation, it is natural to imagine that it was meant to extend to *all mankind alike*, without any preference or exclusive right in one man more than another. In the primitive ages of the world, therefore, we are to suppose, that every one took from the common stock, without controul or restraint, whatever his wants or inclination led him to desire; and whilst mankind continued in a state of primeval simplicity, no inconvenience would arise from this general liberty; but when they began to increase in number and connections, and the establishment of society gave rise to

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com-

complicated interests, this method of satisfying the demands of *individuals* was found to be no longer practicable, consistently with the wants and interests of the *whole*. The good order of civil government was constantly distracted by the turbulent contentions of various persons striving for the possession of the same thing. It became necessary, therefore, to fix upon some certain and permanent rules for the acquisition and enjoyment of the products of nature, that no one might encroach upon what had previously been acquired by another. This, in respect of the occupation and use of the soil itself, and of other permanent and stationary objects was easily effected; but, as it may readily be perceived, there still remained many things, which from the difficulty of acquisition, and the uncertainty of possession when gained, must still remain in common—such as, for instance, all animals *feræ naturæ*, amongst which are hares, rabbits, pheasants, partridges, &c. these, therefore, long continued, as by the primary laws of nature, to be the property of him who could first take them.

them. But we observe, at this day, that many animals of the above description are no longer reckoned amongst the common property of mankind, and the right of the first taker; but by the municipal laws of England, and many other nations, are deemed to be *appropriated* property belonging exclusively to persons of a particular description, who, and who only, are allowed the privilege of hunting or destroying them. On what principles these laws are founded, how far they extend, and to what objects, in particular, are intended to be the subject of the present treatise—We propose, therefore, to enquire

I. Concerning the *origin and principles* of the Game Laws.

II. Of the *qualifications* by *estate* for killing Game.

III. Of the qualification or exemption by *certificate*.

IV. Of destroying game at *improper seasons of the year*.

V. Of destroying game in the *night time*, and on a *Sunday*, or on a *Christmas Day*.

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VI. Of *tracing hares* in the *snow*, and taking them in *snare*s.

VII. Of destroying the *eggs* of the *winged game*.

VIII. Concerning the *buying and selling* of *game*.

IX. Of the *office, appointment, and authority* of a *gamekeeper*.

X. The *laws and statutes* relating to *rabbits*.

XI. The *laws* made for the *preservation* of *fish*.

XII. Of the *mode of recovering penalties* under the *game laws*.

XIII. An *abstract* of the *act of parliament* relating to the *stealing* of *dogs*, and other *laws* relating to those *animals*.

And *lastly* conclude with some *observations* relative to the *committing* of *trespasses* in the *pursuit* of *game*.

In these *enquiries*, we shall endeavour to be as full as may be necessary, without rendering our *treatise* too bulky, to answer the purpose of a *Pocket Companion* for the *Sportsman*.

GAME LAWS.

CHAP. I.

Concerning the Origin of the Game Laws, and the Principles on which they are founded.

WITH regard to the rise and progress of our present prohibitions in respect of the taking and killing those animals which are known by the denomination of *Game*, it will be found, Sir William Blackstone observes^(a), (2 vol. Com. 413.) that they were introduced into Europe at the same time, and by the same policy, as gave birth to the feudal system of *tenures*. When the leaders of the northern ravagers of Europe, in the third century, came to settle the œconomy of a vanquished country, their policy led them to keep the *rustici*, or natives, in as low a condition as possible, and especially to prohibit them the use of arms. Nothing could do this more effectually than a prohibition of hunting and sporting; this right, therefore, was reserv-

(a) The learned Judge having, in the volume referred to, given us a very perspicuous and sufficiently accurate history of the Game Laws, we shall, in a great measure, follow his deduction in the present chapter.

ed to themselves, and those on whom they chose to bestow it; which were only the capital feudatories, or greater Barons. And accordingly we find in the feudal constitutions, one and the same law prohibiting the *rustici* in general from carrying arms, and also proscribing the use of nets, snares, or other engines for destroying the game.

Hunting has, in England, ever been esteemed a princely diversion. In the time of the Britons, who derived much of their subsistence from the chase, the whole island was replenished with all sorts of game; but under the Saxon government, when lands began to be enclosed and cultivated, the wild and untameable animals naturally fled into the woody and desert tracts, which not having been disposed of in the first distribution of lands, were held to belong to the sovereign, who reserved, on pain of a pecuniary forfeiture, the game with which they abounded for his own use and diversion; but every *freeholder* had a right of sporting upon his *own territories*, provided he abstained from the king's forests. Upon the Norman conquest, however, a new doctrine took place, and the liberty of pursuing and taking such animals as were accounted game, was then held to belong to the king only, or such as acted under his authority.

This right, thus newly vested in the crown, was exerted with the utmost rigour, and the most horrid tyrannies were exercised in order to preserve the game for the royal diversion.

diversion. This occasioned the *carta de foresta*, by which many forests were disafforested, and regulations made in respect to such as remained ; and we are happy to observe, that a variety of subsequent statutes, with the long acquiescence of the crown, has rendered this prerogative now no longer a grievance to the subject.

It appears from these deductions, that the sole right of taking and destroying game belongs exclusively to the king, and such as he may authorize (*a*), who are the only persons that can acquire any property, however fugitive and transitory, in the animals coming under that denomination.

As to the justice of this exclusive privilege, and of the innumerable restrictions recently introduced by the legislature in respect of the persons permitted to kill game, it may be observed, that though by the *law of nature*, every man has an equal right of pursuing and taking to his own use all such creatures as are properly *feræ naturæ* ; yet it follows, from the very end and constitution of *society*, that this natural right, however unequivocal in itself, may be abridged or controuled by such restrictions as it has been found expedient to impose for the benefit of the *community*. And in consequence of this

(*a*) This has lately been controverted by an ingenious editor of the Commentaries of Blackstone, but, in the author's opinion, not successfully.

authority, we find that the municipal laws of many nations have exerted such power of restraint, and invested the prerogative of hunting and taking these animals in the sovereign of the state only, and such as he shall authorise. The reasons which concurred in making these constitutions were probably—for the encouragement of agriculture, by giving every man an exclusive privilege over his own soil—for the preservation of the several species of these animals which, by a general liberty, would be extirpated—for prevention of idleness and dissipation in husbandmen, artificers, and others of lower rank, which would be the unavoidable consequence of an universal licence—for prevention of popular insurrections, and resistance to the government, by disarming the bulk of the people.

Having now briefly enquired into the origin and history of the Game Laws, and suggested the political reasons and principles on which they appear to be founded, we shall proceed to the other divisions of our subject, and enumerate such particular provisions respecting them, as are now subsisting and in force.

CHAP. II.

Of the Qualifications requisite to entitle Persons to kill Game, and the Penalties inflicted on Persons not qualified.

IT may be observed as a prelude to the substance of the present chapter, that the Game Laws do not properly speaking *qualify* or *authorize* any one, except in the single instance of a gamekeeper, to take or kill game, but, in order to prevent the formal process, and also the inconveniences of an action by the *person injured*, (who might perhaps remit the penalties) the statutes made for the preservation of game, inflict *additional* penalties, to be recovered by *any of the king's subjects* from certain persons of inferior rank, who may be found offending in this particular; but it does not follow that persons *excused* from these additional penalties are therefore *authorized* to kill game: the circumstance of being possessed of 100*l. per ann.* &c. are not so properly *qualifications* as *exemptions*; and the persons so exempted from the penalties of the Game Laws, are, notwithstanding, liable as well to actions of trespass by the owners of land, as also, if they kill game within any royal franchise, to actions by such as have the right of free warren there.

Having premised thus much, we shall proceed to connect together, and arrange in the plainest manner we are able, the substance of the several acts of parliament relative to the head of "*Qualification by Estate*," and as we go along shall occasionally advert to the constructions they have received from the courts.

The estate required to exempt the possessor from the penalties of the Game Laws, have many times varied. In the reign of Richard the 2d, (which is the first time we meet with any defined qualification) it was only 40s. in the reign of James the 1st it was advanced to 10l. and in that of Charles the 2d, (when the last qualification act was passed) to 100l. *per ann.* This, however, has not been owing to any increasing spirit of monopolization in the legislature, but to the gradual alteration of the value of money, which has decreased nearly in the above proportion. As these several acts are still in force, and the prosecutor may resort to either of them, according as he is inclined to be more or less severe against the offender, it will be necessary to insert them all, though not at equal length.

Statute
13 Ric. 2.
Hares.

The first qualification, (as we have said) relating to the game, is found in statute 13 Ric. 2. c. 13. by this it is enacted that no *layman*, who hath not lands or tenements of 40s. a year, or *clergyman*, not being advanced to 10l. a year, shall have any greyhound, hound, or other dog to hunt, nor shall

shall use any fyrets, hays, nets, harepipes, cords, or other engines for taking or destroying *hares* or *conies*, or other *gentlemens game*, on pain of one year's imprisonment, to be inflicted by the justices at their sessions.

Then follows 1 Jac. 1. c. 27. by which 1 Jas. 1.
it is provided that every person, *unless* seized in his own or his wife's right of an Deer,
estate of inheritance of 10l. a year, or Hares,
of a life estate of 10l. a year, or goods to Pheasants,
the value of 200l. or *unless* he be the Partridges.
son of a lord or knight, or the son and heir apparent of an esquire, who shall keep any *greyhound* for coursing of *deer* or *hare*, or any *setting dog* or *net* to take *pheasants* or *partridges*, and be thereof convicted by confession or oath of *two* witnesses, before *two* justices, he shall be committed to gaol for three months, without he pay 20s. to the poor, or after one month's imprisonment, be bound with two sureties, in 20l. each, not to offend again.

And by 7 Jac. 1. c. 11. relating to *par-* 7 Jas. 1.
tridges and *pheasants only*, there is an express Pheasants,
provision, authorising every person having Partridges.
free warren, and every lord of a manor, and also every *freeholder* seized in his own or wife's right of lands, or hereditaments of the clear yearly value of 40l. by themselves, or by their household servants by them authorized, to take *pheasants* and *partridges* in the *day time*, between *Michaelmas* and *Christmas*, on their own or masters free-warren, manor, or freehold.

22 and
23 Car. 2.
Game in
general.

The last statute relating to this head, and that which is most worthy of notice, is 22 and 23 Car. 2. c. 25, whereby it is enacted, that every person, not having lands or tenements, or some other estate of inheritance (a) in his own or his wife's right (b) of the clear (c) yearly value of 100l. or for a term of life (d), or having lease or leases of 99 years, or for any longer term, of the yearly value of 150l. other than the son and heir apparent of an esquire, or other persons of higher degree (e), and the owners and keepers of forests,

(a) A vicar, in respect of his church, has not an estate of inheritance, but for his life only.—*Caldecot's Cases*, 188.

(b) This is not to be understood of a tenant by the curtesy, but of one whose wife is living.—*Vide Co. Lit.* 351.

(c) On this word it has been held that the estate must be clear of all mortgages or incumbrances created by the owner, or by those under whom he claims.—*Caldecot's Cases*, 230. But an equitable estate of that value is sufficient.—*Ibid.*

(d) It has been determined on this part of the act, that a tenant for life must have an estate of 150l. to exempt him from the penalties of the Game Laws.—*Ibid.*, 188.

(e) Esquires are—1. The younger sons of noblemen, and their heirs male for ever. 2. The four esquires of the king's body. 3. The eldest sons of baronets, of knights of the Bath, and knights batchelors, and their heirs male in the right line. A justice of the peace is also an esquire for the time he is in the commission, but no longer.—*Blount*. Persons of higher degree than esquires, are Colonels, Serjeants at Law, and Doctors in the three learned

forests, parks, chaces, or warrens, being stocked with deer or conies for their necessary use in respect to the said forests, parks, chaces, or warrens, are declared to be persons, by the laws of this realm, not allowed to have or keep for themselves, or any other person (*f*), guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, low-bells, hare pipes, gins, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, but shall be prohibited to have, keep, or use the same.

From the inaccurate composition and punctuation of the above statute, it may be proper to give the reader an abstract of the qualifications it requires, as determined by the resolution of the courts. Abstract of qualification.

1. *Every person having lands or tenements, or other estates of inheritance of the clear yearly value of 100l.*

2. *Or for term of life, or lease or leases for 99 years, or any longer term, of the clear yearly value of 150l.*

learned professions; but neither esquires, nor any of these are qualified to kill game, unless they have the requisite estate mentioned in the preceding part of the act; though their sons are qualified without any estate—1 *Term Report* 44. This, however unreasonable it may seem, has been fully settled to be the true construction of the act.

(*f*) An *unqualified* person, therefore, cannot keep the dogs of a *qualified* person, a thing frequently required of a tenant by his landlord.

3. *The*

3. *The sons and heirs apparent of esquires, or of other persons of higher degree.*

4. *The owner or keeper of any forest, park, chase, or warren.*

5. *The lord of any manor or royalty.*

6. *The gamekeeper of any lord or lady of a manor, provided he be a person qualified, or really and truly a servant to such lord or lady, or immediately employed and appointed to kill game for the sole use of such lord or lady.—*

[These two last qualifications arise from Stat. 5 Anne, and 3 Geo. 1. hereafter mentioned.]

5 Anne, c. 14. *unqualified persons keeping or using dogs, &c.* We now come to 5 Anne, c. 14. *s. 4.* which is the act most frequently resorted to at this day, and indeed most efficacious in its tendency; for by this stat. it is enacted, that if any person not qualified as above, shall keep or use (a) any greyhounds, setting-dogs, hays, lurchers, tunnels (b), or any other engines (c) to kill and destroy the game, and shall be thereof convicted upon the oath of one witness by the justice of peace where

(a) These words being in the disjunctive, the bare keeping of one of these dogs is an offence, 1 Stra. 496; as to the using, it has been determined, that walking about with an intent to kill game, is 2 using within this statute.

(b) This being a penal act, must be construed strictly, and will not extend by any equitable construction to other dogs, besides those here enumerated.

(c) It has been held that a gun is not such an engine, the bare keeping of which is penal; it must be shewn to be used for the destruction of game, 2 Stra. 1098.

such

such offence is committed, he shall forfeit the sum of 5*l*. one half to go to the informer, and the other half to the poor of the parish (*d*), to be levied by distress (*e*) under the warrant of a justice, and for want of (*f*) distress, the offender shall be sent to the house of correction for three months for the first offence, and for every after offence four months; and any justice of the peace, or lord or lady of manors, are allowed to take away any hare or other game, and likewise any dogs, nets, or any other engines which shall be in the custody of any person not qualified to keep the same, to their own use.

Justices and lords of manors, may take away game &c.

And by the afore said stat. 22 and 23 Car. 2. c. 25. s. 2. it is provided, that gamekeepers (*g*) or any other persons by warrant of a justice of the peace may, in the day time, search the houses, or other places of any such persons prohibited by this act to keep or use any dogs, nets, or other engines afore said, and the same seize and keep for the use of the lord of the manor, or otherwise to cut in pieces or destroy the things so prohibited.

As may gamekeepers and others by warrant.

(*d*) See 2 Geo. 3. c. 19. post, chap. xii.

(*e*) Goods distrained for penalties under the Game Laws are not repleviable. 1 Stra. 567.

(*f*) The justice cannot therefore commit, if the offender have effects sufficient to answer the penalty.

(*g*) It has been adjudged that gamekeepers, as well as others, must have a warrant to authorise them to search. Comberb. Rep. 183.

And

1 Jac. 1.
c. 27. Pen-
alty for
killing
game of
any sort.

And by 1 Jac. 1. c. 27. §. 2. every per-
son who shall shoot at, kill, or destroy, with
any gun, cross-bow, stone-bow, or long-bow,
any pheasant, partridge, pigeon, heron, mal-
lard, duck, teal, widgeon, grouse, heathcock,
moor-game, or any such fowl, or any hare;
and the offence be proved by the confession
of the party, or by the testimony of two
witnesses, upon oath, before two justices
where the offence shall be committed, the
party apprehended shall be committed to
the common goal for three months, unless
he pay to the churchwardens of the parish
where the offence committed, or where ap-
prehended, 20s. for the use of the poor,
for every pheasant, partridge, pigeon, &c.
he shall so take or destroy, and also within
one month after commitment, become
bound with two sureties in 20l. a piece to
the king, not to shoot at, kill, take, or
destroy any of the said games by the means
aforesaid; and by 7 of same king, c. 11.
§. 8, every person who shall take, kill, or
destroy any pheasant or partridge, with sett-
ing dogs and nets, or with any nets, snares,
or engines, proved by confession of the party,
or the testimony of one witness, taken as
aforesaid, shall forfeit the like sum, and
enter into like sureties.

7 *ibid*,
Pheasants
and Par-
tridges.

Officers
and Sol-
diers.

And by the annual Mutiny Bill, §. 49, if
any officer or soldier shall, without leave of
the lord of the manor, under his hand and
seal, take, kill, or destroy any hare, coney,
pheasant, partridge, pigeon, or any other sort
of fowls, poultry, or fish, or his Majesty's game,
and

and be thereof convicted before a justice, on the oath of *one* witness; every officer so offending shall forfeit 5l. to the poor of the place; and every officer, commanding in chief upon the place, shall forfeit 20s. for every such offence committed by any soldier under his command; and if such officer, after demand by the constable or overseer, shall not pay the penalties within two days, he shall forfeit his commission.

And by 4 and 5 Will. and Mary, c. 23. 4 and 5
§. 3. every *constable*, *headborough*, and *tithing-* Will. and
man, being authorised by *one* justice of peace, Mary, c.
is empowered to enter into, and search the 23. Con-
houses of suspected persons *not qualified*, and &c. may
in case any *hare*, *partridge*, *pheasant*, *pigeon*, search for
fish, *fowl*, or *other game* (a) shall be found, game.
the offender shall be carried before a justice
of peace (b); and if such person do not
give a good account how he came by such
game, or shall not in convenient time, to
be named by the justice, produce the party
of whom he bought the same, or procure
some creditable person to depose upon oath
of sale thereof, he shall be convicted by
the said justice of such offence, and shall

(a) It was once doubted whether this act extended to rabbits kept in a private warren, and it was held not. 1 Lord Raym. 151.

(b) Though constables, &c. are authorised to search for game, no power is given them to seize or take away. Perhaps this is implied from the spirit of the act.

forfeit

forfeit for every hare, partridge, fish, or other game, any sum not under 5s. nor more than 20s. one moiety to be paid to the informer, and the other to the poor of the parish where the offence is committed, to be levied by distress under warrant of the justice, and for want of distress, the offender shall be committed to the house of correction, for a time not exceeding one month, nor less than ten days, there to be whipt and kept to hard labour.

And by §. 3. if any person so produced shall not give sufficient evidence of his innocence, he shall be convicted in the same manner as the person first charged, and so from person to person until the first offender be discovered.

Penalty
against
inferior
tradesmen
hunting,
&c.

By the same act, §. 10. after taking notice that great mischiefs do ensue to inferior tradesmen, apprentices, and other dissolute persons neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves, and damage of their neighbours, it is enacted, that if any inferior tradesman (a), apprentice, or other dissolute person (b), shall hunt, hawk, fish or fowl, (un-

(a) It has been adjudged, that if a person be an inferior tradesman, within the meaning of this act (which by the bye is not very intelligible) it makes no difference as to his qualification by estate. Lord Raym. 149.

(b) A huntsman has been held not to be within the meaning of this part of the act. 1. Blac. Rep. 90.

company with the master of such apprentice duly qualified) such persons may be sued for their wilful trespass on coming on any person's ground, and if found guilty shall pay full costs.

The restrictions and penalties we have hitherto spoken of, relate to such persons only as are not *qualified* under the 22d and 23d Car. 2. Those we shall *hereafter* have occasion to notice relate (unless otherwise mentioned) as well to those who *are*, as those who are *not* qualified under that statute.

We shall here take occasion to observe, Observations that on the footing of *civil policy*, the provisions we have enumerated appear to be sufficiently defensible; on the score of *natural justice*, they may, perhaps, be found to be less unexceptionable; but of this we are not prepared to enquire: We should think it ill becoming us, as peaceable subjects of the realm, to assume a legislative character, and arraign the justice of laws which the wisdom of successive parliaments have thought it expedient to provide.

CHAP. III.

Of the Qualifications by Certificate for killing Game (a).

BESIDES the penalties and restrictions inflicted by the former statutes, on persons of *mean estate*, who employ themselves in destroying the game of the kingdom

Every person, whether qualified or not, must take out a certificate previous to his killing game.

It is enacted by 25 Geo. 3. c. 50. s. 2, that every person in Great Britain, who shall use any dog, gun, net, or other engine for the taking or destruction of game, (such person not acting as *gamekeeper* under a deputation duly registered) shall every year previously to his using the same, deliver in a paper or account in writing, containing his name and place of abode, to the clerk of the peace of the county where he shall reside, or his deputy, and annually take out a certificate

(a) It has erroneously (and hastily enough) been supposed by some, that the following act requiring persons using guns, &c. for the destruction of game, to enter their names, and take out certificates thereof, with the clerk of the peace, operated as an exemption from the penalties inflicted by former statutes, so far from doing which it *superadds additional* penalties, in case the *former* requisitions of this act are not complied with.

(b) The duty on these certificates is 3l. 3s.

of having so done; and a certificate (a) shall also be annually taken out, of every reputation (b) of a gamekeeper granted by any lord or lady of a manor in England or Wales, which certificate shall bear date on the day whereon it is issued, and remain in force from thence until the 1st day of July then after, and no longer (c).

If the clerk of the peace shall refuse to grant such certificate, he shall forfeit 20l.

And it is by the same act further enacted, (s. 8.) that if any person shall use any greyhound, hound, pointer, setting-dog or other dog, or any gun, net, or other engine for the taking or destruction of any hare, pheasant, partridge, heath fowl, (called black game) or grouse, (called red game) or any other game whatsoever, without having obtained such certificate, such person shall forfeit the sum of 10l. (the royal family are excepted out of this act.)

Penalty for killing game without certificate.

And to prevent the said statute from being evaded, and to facilitate the detection of offenders, it is provided that every person having obtained a certificate in manner aforesaid, who shall find any other person using any dog, gun, net, or other en-

Persons having obtained a certificate may demand it of another.

(a) The duty on this certificate is 1l. 1s.

(b) See post chap. ix.

(c) The clerk of the peace is entitled by this act to 1s. for his trouble in making out the said certificate.

gine for the taking or destruction of game it shall be lawful for him, (after having produced his own certificate) to demand from such other person using such dog, &c. the certificate to him issued, of having conformed to the said act; and on such demand such person shall produce such certificate, and permit the same to be inspected; and on refusing to produce the same, and also refusing to give his christian name and surname and place of residence, or giving a false name or place of residence, such person shall forfeit the sum of 50l.

Certificate does not authorise unqualified persons to kill game, nor the killing game out of season.

And it is further provided by the said act, that the certificate thereby directed to be taken out *shall not authorise* any person to use any greyhound, hound, pointer, setting-dog, spaniel, or other dog, or any gun, net, or other engine for the taking or destruction of game, *at any time, or in any manner, prohibited by former acts*; nor shall authorise any person to use the same *unless such persons shall be properly qualified* so to do under the laws now in being; but shall notwithstanding such certificate be liable to the same penalties as are inflicted by former acts now in force (a).

Remarks.

It may be proper here to subjoin a few remarks as to the *legal property* persons properly qualified have in the game they are in pursuit of. This, in general, continues so long only as it remains *within* the limits of the manor or liberty of the owner.

(a) See ante, chap. ii.

But it is held, that if a person start game upon his own grounds, and pursue and kill it on another's, it will be his own property, because the possession which he gained by finding it within his *own liberty* continued by the *immediate* pursuit. 11 Mod. Rep. 75.

If he start it on *another man's ground*, and kill it there, it will belong to him on whose ground it was killed, because the property arises *ratione soli*. Lord Raym. 251.

But if after having been started in one man's ground, it be killed in that of a *third person*, it will belong neither to him on whose ground it was started, because it is a *local* property, nor to him on whose ground it was killed, it not being there started; it will therefore belong to the person who killed it, though, as we have formerly intimated, he will be guilty of a trespass on the grounds of both persons. *Ibid*.

If a stranger start game in the *chace* or *free warren* (a) of one man, and hunt it into the liberty of another, the property

(a) A *chace* is a privileged place for the keeping of beasts of chace or royal game, with exclusive power of hunting therein.

A *free warren* is a franchise granted by the king the custody of beasts and fowls of warren, viz. hares, rabbits, partridges, and pheasants; but this franchise is now little known, the name being retained principally in grounds set apart for breeding hares, and rabbits.

will continue in the owner of the chace or warren, and the keeper may pursue and retake them, the property not being altered by being driven out of the liberty unless it be out of the pursuit of the officers; for whilst the keeper pursues it, does not in law pass into a new liberty but still continues to belong to the chace or warren, which is a place of privilege and public establishment. 2 *Bac. Abr.* 613.

CHAP. IV.

Of destroying Game at improper Seasons of Year.

Destroy-
ing water-
fowl be-
tween the
1st of June
and the 1st
of October.

FOR the general preservation and protection of game, it is provided, by 9 *A. c.* 25. *s.* 4. that if any person whatsoever shall by *hays, tunnels, or other nets, ditches, and* take away any *wild duck, teal, wigrons, or other water fowl*, in any fens, lakes, brooks, waters, or other places of resort for wild fowl in the *moulting season*, (viz. by 10 *Geo. 2. c.* 32. between the *first of June* and the *first of October*) such person being there convicted before a justice, shall forfeit 5s. and the hays, nets, or tunnels used in driving or taking such fowl, shall be destroyed.

And by 2 Geo. 3. c. 19. s. 1. it is enacted, that no person shall, upon any pretence whatever, take, kill, destroy, carry, sell, buy, or have in his possession any partridge, between the twelfth day of February, and the first day of September; or any pheasant between the first day of February, and the first day of October, unless such pheasant be taken in the proper season, and be kept in a mew or breeding place; and it is further provided, that any person offending against this act, shall forfeit 5l. for every partridge or pheasant so taken, &c. to be paid to the informer, with full costs of suit.

And by 13 Geo. 3. c. 55. s. 2. no person shall kill, destroy, carry, sell, buy, or have in his possession any heath-fowl, commonly called black-game, between the tenth day of December, and the twentieth day of August, nor any grouse, commonly called red-game, between the tenth day of December, and the twelfth day of August, nor any bustard between the first day of March and the first day of September, in any year, upon pain of forfeiting for the first offence, a sum not exceeding 20l. nor less than 10l. and for the second and every subsequent offence, a sum not exceeding 30l. nor less than 20l. one moiety thereof to go to the informer, and the other moiety to the poor of the parish; and in case the penalty be not paid, and there be no distress to be had, the offender may be committed to prison, to be kept to hard labour for any time, not exceeding six, nor less than three months.

C

And

Black
game and
grouse.

And for the further preservation of black-game and grouse, it is enacted by 4 and 5 Will. and Mary, c. 29. s. 11, that no person shall between the *second* day of February, and the *twenty-fourth* day of June, burn any *grig, ling, heath, furze, goss, or fern*, on any mountains, hills, heaths, moors, forests, chaces, or other wastes, upon pain that the offender shall be committed to the house of correction for any time not exceeding *one month*, nor less than *ten days*, there to be *whipped*, and kept to hard labour.

CHAP. V.

Of destroying Game in the Night Time, on a Sunday, or on Christmas-Day.

Destroy-
ing Phea-
sants and
Partridges
in the
night.

BY 23 Eliz. c. 10. s. 2 and 5, it is enacted, that no person of whatever estate, degree, or condition (a), shall take or destroy any *pheasants* or *partridges* in the *night time*, upon pain of forfeiting 20s. for every pheasant, and 10s. for every partridge.

(a) Though the words in the acts against destroying game in the *night* are sufficiently general to include all descriptions of persons, we will not, for the honour of sportsmen, suppose that the legislature had any other in view than *poachers*.

And by 9 Anne, c. 25. s. 3. if any person whatsoever shall take or kill any hare, pheasant, partridge, moor-game, heath-game, or grouse in the night time, he shall, on conviction before a justice, forfeit the sum of

Hares,
Pheasants,
Partridges,
Moor-game and
Grouse.

5l. one half to go to the informer, and one half to the poor of the parish, to be levied by distress, and for want of distress, be sent to the house of correction for three months for the first offence, and four months for every after offence.—These penalties, however, being thought insufficient,

By 13. Geo. 3. c. 80. s. 1. it is further provided, that if any person shall kill, take, or destroy, any hare, pheasant, partridge, moor-game, or heath-game, or use any gun, dog, snare, net, or other engine, with an intent to take, kill, or destroy the same in the night time, viz. between seven o'clock at night, and six in the morning, from the 12th of October to the 12th of February, and between nine o'clock at night, and four in the morning, from the 12th of February to the 12th of October, such person being thereof convicted upon the oath of one witness, before one justice, shall forfeit for the first offence, a sum not exceeding 20l. nor less than 10l. and for the second, a sum not exceeding 30l. nor less than 20l. one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish.

Ibid, from
12th Oct.
to 12th
Feb. &c
converso.

And by 4 and 5 Will. and Mary, c. 23. all lords of manors, or any persons authorized by them as gamekeepers, may, within

Lords of
Manors
may resist
offenders.

within their royalties, resist such offenders in the night time, and shall suffer no punishment on that account.

Destroy-
ing Game
on a Sun-
day or
Christmas
Day.

And by the aforesaid act of 13 Geo. 3. c. 80. s. 6. it is also enacted, that if any person shall upon a *Sunday*, or on *Christmas-day*, in the *day time*, take, kill, or destroy any *hare*, *pheasant*, *partridge*, *beath-game*, or *moor-game*, or shall upon a *Sunday* or *Christmas-day*, use any *dog*, *gun*, *net*, or *other engine* for the taking, killing, or destroying thereof, such person being convicted, shall be subject to the like penalties, as by the said act are inflicted for taking or destroying game in the *night time*.

CHAP. VI.

Of tracing Hares in the Snow, and of taking them in Gins (a).

WE intend not to insult the generous sportsman by warning him against offences which he would be ashamed to commit: far be it from us to suspect him of practices so unsportsmanlike and un-

(a) The other statutes concerning hares will be found in Chap. II. IV. V. and VIII. according to their respective imports. See Index.

manly,

manly, as to avail himself of the inclemency of the season, or the wiles of stratagem, to catch a defenceless prey by surprise. It is to arm him against the mercenary *poacher*, that we enumerate the penalties noticed in this and the preceding chapter; penalties which we are persuaded no one of our readers (however averse to the general spirit of the game laws) would desire to be repealed.

By 14 and 15 Henry 8. c. 10. it is enacted, that no person of whatever estate, degree, or condition they may be, shall *trace and kill any hare in the snow*, on penalty of 6s. 8d. for each hare. Of tracing hares in the snow.

And by 1 Jac. 1. c. 27. whoever shall *trace or course* any hares in the snow, shall on conviction before two justices, by confession, or oath of *two* witnesses, be committed to gaol for *three months*, unless he pay to the churchwardens for the use of the poor, the sum of 20s. for every hare he shall so take or destroy, or shall within one month after his commitment become bound with two sureties, in 20l. a piece, before two justices, not to offend in like manner.

It is also by the same act provided, that every person who shall at any time take or destroy any hares with *hare pipes, cords, or gins*, *with any such instruments, or other engines*, shall, on conviction before *two* justices, by confession, or oath of *two* witnesses, suffer the like penalties. Of taking them in

GAME LAWS.

And by 22 and 23 Car. 2. c. 25. s. 6. if any person be found setting or using any snares, harepipes, or other like engines, and shall thereof be convicted by confession or oath of *one* witness, before *one* justice, within a month after the offence committed, he shall give to the party injured such satisfaction as the justice shall appoint, and pay down immediately to the overseers, for the use of the poor, a sum not exceeding 10s. or shall else be committed to the house of correction for a time not exceeding one month.

CHAP. VII.

Concerning the Destruction of the Eggs of winged Game.

IN order to prevent the diminution of the *feathered game*, it is necessary to prohibit the destruction of their eggs.

Destroy-
ing the
eggs of
wild fowl,

By 25 Hen. 8. c. 11. it is therefore enacted, that no person from the *first* day of *March*, to the *last* day of *June* in every year, shall withdraw, take, destroy, or convey any eggs of *wild fowl* from, or in, any nest where they shall be laid, upon pain of imprisonment for one year; and of forfeiting for every egg of any *crane* or *bustard* 20d. and for every egg of *bittour*, *heron*,
or

or *shovelard* 8d. and for every egg of *mal-lard*, *teal*, or *other wild fowl* 1d. half to the king, and half to the informer.

And by 1 Jac. 1. c. 27. s. 2. any person and of who shall take the eggs of any *pheasant* or *pheasants* *partridge* out of the nest, or *willingly break*, and *par-tridges*, *spoil*, or *destroy* the same in the nest, shall, on conviction before *two* justices, by confession, or oath of *two* witnesses, be committed to gaol for *three months*, unless he pay, on conviction, to the churchwardens, for the use of the poor 20s. *for every egg*, or within one month thereafter, become bound with two sureties in 20l. each, not to offend again in the like manner.

CH A P. VIII.

Of buying and selling Game.

IF game were permitted publicly to be bought and sold, the statutes made for their preservation would be nugatory: no penalties would be sufficient to check the rapacity of either indigence or avarice.

It is therefore enacted, by 1 Jac. 1. c. 27, Penalty s. 4, that if any person shall sell, or buy for buying to sell again (a), any *deer*, *hare*, *partridge* or *or selling deer, hare, partridge, pheasant*.

(a) It seems therefore no offence under this act merely to buy game without an intention of selling it again; but we are to remember, that by 9 Ann. c. 25. it is penal for an unqualified person to have game in his possession.

pheasant (except *partridges* and *pheasants* reared up by hand, or brought from abroad) he shall, on conviction at the assizes, quarter-sessions, or before two justices, forfeit 40s. for every *deer*, 10s. for every *hare*, 10s. for every *partridge*, and 20s. for every *pheasant*; one moiety to go to the informer, and the other to the poor of the parish — This act being found to be an insufficient provision against the traffic of selling game,

Further penalties.

It was by 28 Geo. 2. c. 12. s. 1. more-over provided, that if any person whether qualified or not qualified to kill game, shall sell, expose, or offer to sell any *hare*, *pheasant*, *partridge*, *moor*, *heath-game*, or *grouse*, every such person shall, for every such offence, be liable to the same penalties as by the act of 5 Anne (next hereafter mentioned) are inflicted upon higlers, chapmen, &c. for buying or selling game;—and as it was found difficult to detect persons *actually selling game*, in order the more effectually to put a stop to this practice, it was further provided, That,

Having game in possession qualified or not.

If any of the aforesaid game shall be found in the *shop*, *house*, or *possession* of any *poulterer*, *saleman*, *fishmonger*, *cook*, or *pastry-cook*, (or by 9 Anne, c. 25. s. 3. of any other person not qualified in his own right, or entitled under some person so qualified) *the same shall be deemed an exposing thereof to sale.*

Penalty against higlers, &c. having game in their possession.

And by 5 Anne, c. 14. s. 2. if any *higler*, *chapman*, *carrier*, *innkeeper*, *victualler*, or *alehouse-keeper* shall have in his custody any *hare*, *pheasant*, *partridge*, *moor*, *heath-game*

game or grouse (unless in the case of a carrier they be sent up by persons qualified to kill game) or shall *buy, sell, or offer to sell*, any such hare, pheasant, &c. on conviction by the oath of *one* witness, he shall forfeit for every hare, pheasant, &c. the sum of 5l. one half to be paid to the informer, and the other half to the poor of the parish, to be levied by distress, and for want of distress, the offender shall be committed to the house of correction for *three months* for the first offence, and *four months* for every other offence.

And by *f. 4.* of the same statute, any justice of peace and lord of a manor (within the same manor) may take to his own use any such hare, &c. or any other game which shall be found in the custody or possession of any such higher or other person not qualified to kill game.

Justices and lords of manors may take game from persons not qualified.

And by the same act, *f. 3.* if any person buying or selling of game against the said act shall inform against any person under the same so as that he be convicted, such informer shall be discharged of the aforesaid penalties, and shall receive the same benefit as any *other* informer.

Informers are exempt from the penalties.

MUSEVM
BRITANNICVM

G. H. A. P. IX.

Concerning the Appointment, Office, and Authority of a Game-keeper.

Lords of
manors
may ap-
point
game-
keepers,

who may
seize guns,
&c.

THE first statute we meet with authorizing the appointment of game-keepers, is 22 and 23 Car. 2. c. 25. s. 2. By this act lords of manors, or of other royalties, not under the degree of an esquire, may, by writing under their hands and seals, appoint *game-keepers* within their manors or royalties, (a) who shall be authorized to take and seize all guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies; ferrets, tramels, lowbels, bays, or other nets; hare-pipes, snares, or other engines (b) for the taking and killing of conies, hares, pheasants, partridges, or other game which shall be used within the precincts of such manors by any persons by that act prohibited (c) to keep or use the same. This statute merely authorises game-keepers to use certain means tending to the preservation of the game, without empowering them to kill it. But,

(a) See the form of a game-keeper's deputation at the end of this chapter.

(b) It is observable here, that game-keepers are not authorized to seize game itself, but only instruments for its destruction.

(c) See Chap. II.

By

By 5 Ann. c. 14. s. 4. all lords and ladies of a manor are authorized, by writing under their hands and seals, to empower such game-keepers to kill, within the said manor (a), any hare, pheasant, partridge, or other game. If, however, such game-keeper shall sell or dispose of the game he shall so kill, without the knowledge or consent of the said lord or lady (b), and shall be thereof convicted on complaint of such lord or lady, and the oath of one witness before a justice of peace, he shall be committed to the house of correction, and kept to hard labour for the space of three months.

By a clause in the last act, lords of manors might appoint an *indefinite number* of game-keepers; but this being found more conducive to the destruction than the preservation of game, it is provided by 9 Ann. c. 25. that no lord or lady of any manor shall appoint more than *one* game-keeper within one manor, with power to kill game. And further, that the name of the person so appointed shall be entered with the clerk of the peace of the county, and a certificate thereof be granted by the said clerk on payment of 1s. for the same; and in case

and may empower them to kill game.
Game-keepers shall not sell game.

No person shall appoint more than one game-keeper for one manor.

(a) Game-keepers are liable to the same penalties as unqualified persons if they kill game out of their proper manors; but it has been held that their guns and dogs cannot be taken from them as they may from other persons. 2 Will. Rep. 387.

(b) Nor with their consent. See ante, Chap. VIII. (28 Geo. 2. c. 12.)

Penalty
against
game-
keepers
killing
gamewith-
out certi-
ficate.

any game-keeper whose name shall not be so entered with the clerk of the peace (unless such game-keeper be otherwise qualified to kill game) (a) shall kill any *bare, pheasant, partridge, moor, beath-game, or grouse*, he shall, on conviction by the oath of one witness before a justice, forfeit, for every such offence, the sum of 5l. one half thereof to be paid to the person informing, and the other half to the poor of the parish, to be levied by distress; and in case there be no distress, the offender to be sent to the house of correction, for three months for the first offence, and four months for every other offence.

No lords
of manors
shall ap-
point
game-
keepers
unless
qualified,
or the *ser-*
vants of
such lords.

And it is by 3 Geo. 1. c. 11. enacted that no lord or lady of a manor shall appoint any person as a game-keeper with power to kill game, unless such person be *qualified* to kill game, or be *truly a servant (b)* to the said lord or lady, or immediately employed by him or her to kill game for his or her use.

Penalty a-
gainst per-
sons not so
qualified
acting as
game-
keepers.

And if any person not qualified to kill game, or not being truly a servant to a lord or lady of a manor, or not immediately employed to kill game for his or her use shall, under colour of any authority or deputation granted by such lord or lady, *take*

(a) If therefore a game-keeper be qualified in his own right to kill game, he need not enter his deputation.

(b) It is not meant that he must be a *menial* servant.

or

or kill any hare, pheasant, partridge, or other game whatsoever, or keep or use any greyhounds, setting-dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and destroy the game, he shall, for every such offence, incur the like penalty of 5*l.* as by the said act of 9 Ann. c. 21. (a).

And by 25 Geo. 3. c. 5. § 2. every deputation of a game-keeper granted to any person by any lord or lady of any manor in England or Wales, shall be registered with the clerk of the peace of the county in which the said manor lies. And if he neglect to have the same registered, and to take out a certificate of such registry (b), he shall forfeit the sum of 20*l.*—[Game-keepers to any of the royal family are excepted out of this act.]

Every deputation must be registered.

On the appointment of a new game-keeper, a new certificate must be taken out, and the persons acting under the old certificate shall be liable to the penalties of this act.

We have here subjoined the form of a game-keeper's deputation or appointment (c).

“ Know all men by these presents, that
“ I, *Gamaliel Wilson*, of *Melbourne*, in the
“ county of *Cambridge*, Esq. lord of the
“ manor of *Orwell*, in the same county,

(a) Vide p. 35.

(b) See ante, Chap. III.

(c) This must be written on a 6*s.* deed stamp. o

“ have

“ have nominated, deputed, authorised,
 “ and appointed, and by these presents do
 “ nominate, depute, authorise, and ap-
 “ point *Joseph Snell*, of Basingbourn, yeo-
 “ man, to be gamekeeper of and within
 “ my said manor of Orwell, with full
 “ power, licence and authority to pur-
 “ sue, take, and kill any hare, pheasant,
 “ partridge, or other game whatsoever, in
 “ and upon my said manor of Orwell, for
 “ my sole and immediate use and benefit;
 “ and also to take and seize all such guns,
 “ bows, grevhounds, setting-dogs, lur-
 “ chers, or other dogs; ferrets, tramels,
 “ lowbels, hays, or other nets, hare-
 “ pipes, snares, or other engines for the
 “ pursuing, taking, or killing of hares,
 “ rabbits, pheasants, partridges, or other
 “ game, as shall be used within the pre-
 “ cincts of my said manor, by any per-
 “ son or persons, who by law are pro-
 “ hibited to keep or use the same. In
 “ witness whereof I have hereunto set
 “ my hand and seal, this 3d day of June,
 “ 1794.

“ *GAM. WILSON.*” (Seal.)

Scaled and delivered in the presence of
Peter Simpson, Melbourn, aforesaid.

C H A P. X.

Of the Law relating to Conies or Rabbits.

THOUGH rabbits are not, strictly speaking, *game*, yet as they are included in many of the acts relating to the game, and are, in many places, a considerable object of sport amongst the *rustici*, we imagine it will be expected of us to add a chapter concerning those animals. We shall first notice the *common* and then the *statute* law relating to them.

By the common law, if rabbits come *Common* upon a man's grounds from a warren law. or elsewhere, and damage his herbage, it is lawful for him to kill them; but a commoner is not justified in killing rabbits feeding upon a common under pretence of their consuming the herbage; for rabbits being *beasts of warren*, and profitable, the owner of the soil has a right to keep them there; the commoner has no further interest in the common than for the feed of his cattle; and as a *commoner* cannot, much less can a *stranger*. *Cro. Eliz.* 876.

Neither may he destroy or stop up the burrows; but if they be so numerous as to leave insufficient pasture for the commoners' cattle, he may bring an action against the lord for furcharging the common. 1 *Bur.* 259.

The.

Statutes.

Hunting
rabbits in
inclosed
warrens.

The first statute necessary to be inserted under this head is 3 Jac. 1. c. 13. By the second section of this act it is provided, that if any person shall, by *night* or by *day*, unlawfully enter into any park or grounds, *inclosed* (a) with a wall, pale, or hedge, and used for the keeping of conies, and unlawfully hunt, take, chase, or slay, any conies within such park or ground against the will of the owner, and shall be thereof convicted at the suit of the king or the party, at the assizes or sessions, he shall suffer *three months* imprisonment, pay *treble damages* and costs to the party, to be assessed by the justices before whom he shall be convicted, and shall find sureties for his good demeanor for seven years, or remain in prison till he does.

Hunting
in war-
rens not
inclosed at
any time.

And by 22 and 23 Car. 2. c. 25. s. 4, if any person shall, at any time, wrongfully enter into any warren or ground lawfully used for breeding or keeping of conies, *though the same be not inclosed*, and shall chase, take, or kill, any conies against the will of the owner or occupier, not having lawful title so to do, and shall be thereof convicted within one month after such offence, by confession, or oath of *one* witness, before one justice, he shall yield to the party grieved *treble damages* and costs,

(a) This act shall not extend to any grounds inclosed *since* the making thereof, and without the king's licence, s. 7.

and suffer three months imprisonment, and so long after till he find sureties for his good behaviour.

And by 5 Geo. 3. c. 14. it is enacted, ^{In the night time.} that if any person shall so enter into such warren or grounds, in the *night time*, and shall then and there wilfully and wrongfully *take or kill* any coney against the will of the owner or occupier of the said ground, or shall be *aiding or assisting* therein, and be thereof convicted at the *assizes*, he shall be *transported for seven years*, or suffer such other lesser punishment by *whipping, fine, or imprisonment*, as the court shall award.

And by 9 Geo. 1. c. 22. if any person, ^{Persons in warrens disguised.} being *armed and disguised*, shall appear in any warren or *place where hares or conies* are usually kept, or unlawfully rob any such warren, or shall, (*though not armed and disguised*) rescue any person in custody for such offence, or procure any person to join him therein, he shall be guilty of *felony, without benefit of clergy*.

And by the said statute, 22 and 23 ^{Penalty} Car. 2. it is provided, that no person shall kill or take in the *night* any conies ^{against killing rabbits in the night upon borders of warrens.} upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies, except such person be owner of the soil, or lawful possessor of the ground *whereupon* such conies shall be killed, or be by him employed, upon pain of such satisfaction as the justices aforesaid shall award, and also pay

G A M E L A W S.

pay to the overseers for the poor, a sum not exceeding 10s. or in default thereof, be committed to the house of correction, for a term not exceeding one month.

Snaring
rabbits.

And by the 6th stat. of same act, if any person shall be found setting or using any *snare*s, or *other like engines* for the taking of *conies*, and shall be thereof convicted, he shall be liable to the same penalties, as in the last mentioned section.

Inferior
persons
keeping
dogs, &c.
to kill
rabbits.

By the said stat. of 3 Jac. 1. before noticed, it is further enacted, that if any person not having hereditaments of the yearly value of 40l. or not worth in goods the sum of 200l. shall *use* any *gun* or *cross-bow*, to kill *conies*, or shall *keep* any *engine*, *hays*, *nets*, *ferrets*, or *coney dogs*, (except he have inclosed rabbit-grounds, the increase of which is worth 40s. a year, to be let) any other person having hereditaments in fee, in tail, or for life, of the yearly value of 100l. in his own right, or in right of his wife, may lawfully take from such offender all such engines or dogs, and keep the same to his own use.

C H A P. XI.

Of the Laws relating to the Preservation of Fish.

FISH are also included in some of the statutes relating to *game*; and as they form a part of the diversion of country gentlemen, we presume it will be acceptable to many of our readers, to know the existing laws concerning the preservation of those creatures.

The first act it is material to notice under this head, is 3 Ed. 1. c. 20. by which it is enacted generally, that if any person be attainted at the suit of the party, of trespassing in any ponds, large amends shall be awarded; the offender shall suffer three years imprisonment, be fined at the discretion of the court, and find sureties not to offend again; and if he have not wherewith to make fine after three years imprisonment, he shall find like surety, or abjure the realm.

And by 5 Eliz. c. 21. s. 2. it is provided, that if any person shall unlawfully break out, or destroy, any *head or dam of a fish-pond*, or shall wrongfully fish therein with intent to take or kill fish; he shall, on conviction at the *assizes or sessions*, at the suit of the king, or of the party injured, be imprisoned three months, and pay treble damages; and after the expiration of the said

Penalties
against
trespassing
in ponds.

Destroy-
ing the
head of
fish ponds

said three months, shall find sureties for good behaviour for seven years to come.

[See 9 Geo. 1. c. 22. *post.*]

Fishing between six in the morning and six in the evening.

And by 31. Hen. 8. c. 2. s. 2. if any *evil-disposed persons* shall fish in the day time, from six o'clock in the morning till six in the evening, in any *ponds, flets, moats, with nets, hooks, or bait*, against the will of the owners, they shall, on conviction thereof, at the suit of the king, or the party grieved, suffer imprisonment for the space of three months, and find security for their good abearing.

Penalties against fishing in general.

And by 22 and 23 Car. 2. c. 25. s. 1. (after reciting that divers idle and mean persons were used to betake themselves to the stealing and taking of fish out of ponds and rivers) it is enacted, that if any person shall, at any time, use any *casting net, drag net, shove net, or other net whatever, or any angle, hair, noose, troll, or spear*; or shall lay any *wears, pots, nets, fish-hooks, or other engines*, or shall take any fish by any means whatsoever, in any river, stew, pond, mote, or other water, or shall be aiding thereunto, without the consent of the owner of the water, and be convicted thereof before a justice, by confession, or the oath of one witness, within one month after the offence committed, such offender shall give to the party injured such satisfaction as the justice shall appoint, not exceeding treble damages; and shall over and above pay down *presently* unto the overseers of the poor such sum, not exceeding

ceeding 10s. as the justice shall think fit ;
and in default of payment, the said penalties to be levied by distress, and for want thereof, the offender to be committed to the house of correction for a term not exceeding one month, unless the party offending enter into bond, with surety to the party injured, in a sum not exceeding 10l. never to offend in like manner.

And the justice is authorized to take, Justices
in pieces, and destroy, all such angles, may de-
ears, hairs, nooses, trolis, wears, pots, stroy nets,
fish-hooks, nets, or other engines, with angles,
which such offender shall be taken. &c.

Persons aggrieved may appeal to the Appeal.
quarter sessions, whose judgment shall be final.

And by 4 and 5 Will. and Mary, c. 23. Penalties
5 and 6. it is enacted, that no person, against
except makers and sellers of nets, owners keeping
of a river or fishery, authorized fisher- nets, an-
men and their apprentices,) shall keep any gles, &c.
net, angle, leap, pike, or other engine, for
taking of fish.

And the owner of any river or fishery, Owners
or persons by them authorized) may seize of rivers
and keep to his own use every net, angle, may seize
leap, pike, and other engine which shall be nets, &c.
found in the custody of any person fishing
any river or fishery, without the con-
sent of the owner or occupier.

And also any other person authorized by And other
by justice, in the day-time may search persons by
the houses or other places of any person warrant of
by a justice.

by this act prohibited to keep the same, who shall be suspected to have such nets or other engines in his custody, and the same to seize and keep to their own use, or cut in pieces and destroy.

Stealing fish out of parks, gardens, &c. or buying the same, felony. And by 5 Geo. 3. c. 14. s. 1. it is enacted, that if any person shall enter into any park or paddock inclosed (a), or into any garden, orchard, or yard, belonging or adjoining to any dwelling-house, wherein shall be any river, stream, pond, pool, mote, stew, or other water, and by any means whatsoever, without the consent of the owner, shall steal, kill, or destroy any fish, bred, kept, or preserved therein, or shall be assisting therein, or shall receive or buy, any such fish, knowing them to be such; such offenders being indicted within six months thereafter, and thereof convicted, shall be transported for seven years.

Impeachers pardoned.

Persons making confession of such offence, and giving evidence against an accomplice, who in pursuance thereof shall be convicted, shall be pardoned.

Penalty against stealing fish out of other places.

And by the same act, s. 3. it is enacted that if any person shall take, kill, or destroy, or attempt to take, kill, or destroy any fish in any river or stream, pool, pond, or other water, (not being in any park or paddock

(a) The inclosing a piece of ground, and decorating it with plantations, is not sufficient to constitute it a legal park, which can be made only by a grant from the king, or immemorial usage.

inclosed,

nclosed, or in any garden, orchard, or
ard belonging or adjoining to a dwelling-
ouse, but in any other inclosed ground,
ing *private property*) such person being
hereof convicted, by confession, or the
ath of one witness, before a justice, shall
erfeit *five pounds* to the owner of the fish-
ry of such river or other water, and in
efault thereof, shall be committed to the
ouse of correction for a time not exceed-
g six months.

And by 9 Geo. 1. c. 22. (called the *Stealing
Black Act*) if any person *armed and disguised*, fish in *dis-
guise*, fe-
all unlawfully steal or take away any
h out of any river or pond, or (whether
med and disguised or not) shall unlaw-
lly and *maliciously* break down the head
mound of any fish-pond, whereby the
h shall be lost or destroyed, or shall rescue
y person in custody for any such offence,
r procure any other to join him therein,
e shall be guilty of *felony, without benefit
clergy*.

C H A P. XII.

*Concerning the Mode of recovering the Penalties
under the Game Laws.*

THE penalties incurred by such acts
relating to the game as have been
made since the 8th year of the reign of
Geo.

Geo. the 1st. are recoverable in the manner therein respectively prescribed; but by 8 Geo. 1. c. 19. it is enacted, that where any person shall be liable to any pecuniary penalty, upon conviction, before any justice of the peace, for any offence against any law *then in being* for the preservation of the game, it shall be lawful for the prosecutor of such offender to proceed to recover the said penalty, *either by information before a justice, or to sue for the same in any of the Courts of Records at Westminster.*

Provided that no offender shall be prosecuted for the same offence *both* by the way prescribed by *that* law, *and* by the way prescribed by any of the *former laws.*

And by 2 Geo. 3. c. 19. it is provided, that he may also sue for in the said courts, the *whole* penalty for his *own use*, by action of debt or otherwise, and if he recover the same, shall have *double costs*, and that no part of the penalty recovered in such suit, shall be paid to the *use of the poor.*

Such action, however, must be brought within six lunar months after the offence committed.

C H A P. XIII.

An Abstract of the Act of Parliament relative to the stealing of Dogs—and other Law relating to those Animals.

WE think there needs no apology for inserting this useful and not irrelevant subject in a treatise on the Game Laws.

By 10 Geo. 3. c. 18. it is enacted, that Penalties if any person shall steal *any dog, or dogs of any kind or sort whatsoever*, from the owner thereof, or from any person entrusted by the owner with such dog or dogs, or shall ^{against stealing and de-} ~~sell, buy, receive, harbour, detain, or keep~~ ^{taining} any such dog or dogs, knowing the same to be stolen, every such offender being thereof convicted on the oath of *one* witness, or on his or her own confession before *two* justices, shall, for the *first* offence, forfeit a sum not exceeding *thirty*, nor less than *twenty* pounds, at the discretion of such two justices; together also with the charges previous to, and attending such conviction, to be ascertained by the same justices.

And in case such penalty shall not be forthwith paid, such justices shall commit the offender to the common gaol or house of correction, for a time not exceeding *twelve*, nor less than *six* calendar months, until the penalties and charges aforesaid, shall be paid.

D

And

Second
offence.

And if any person having been convicted as aforesaid, shall afterwards be guilty of the like offence, and shall be thereof convicted in manner aforesaid, every such person shall forfeit a sum not exceeding 50*l.* nor less than 30*l.* according as to such justices shall seem meet; together also with the charges previous to, and attending the said conviction, to be ascertained by such justices, before whom such offender shall be so convicted.

Which penalties shall be paid, the one moiety thereof to the person informing, and the other moiety to the poor of the parish where the offence shall have been committed.

And upon non-payment of the said penalties and charges, such justices shall commit the offender to the common gaol, or house of correction, for any time not exceeding eighteen, nor less than twelve months, or until the same shall be paid.

And such justices shall also order the offender to be publicly whipped within three days after commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day time.

Justices
may grant
warrants
to search
for dogs
stolen.

It is further provided, that it shall be lawful for one justice, upon information made to him for that purpose, to grant a warrant to search for any dog or dogs stolen as aforesaid; and in case any such dog, or the skin thereof shall be found, the said justice shall take and restore such
dog

dog or skin to its right owner, and the person in whose custody or possession such dog or skin shall be so found, (such person being privy to the said theft) shall be subject and liable to the like penalties and punishments as are inflicted on persons convicted of stealing any dog or dogs under this act.

Provided, that if any person shall think Appeal. himself or herself aggrieved by any thing done in pursuance of this act, such person may appeal to the next general quarter sessions, within four days after the cause of complaint shall arise, such appellant giving fourteen days notice, in writing, of his intention to appeal to the person whose acts are complained against, and the said justices, at such sessions, shall determine the appeal in a summary way, and award such costs as they shall think meet, which determination shall be *final*.

(This act is worded with great inaccuracy; but it is not within the design of the present treatise to point out the legal quibbles that might arise upon it.)

If a dog, particularly a grey-hound, *Loss of* mastiff, spaniel, or tumbler, (*Cro. Eliz. Dogs.* 125.) go astray, and be detained by the finder, after demand made, an action will lie for the recovery of him.—*Blac. Rep.* 1117.

It is a public nuisance to suffer any mis- *Mischiev-*
chievous dog to go loose and unmuzzled, *ous Dogs.*
to the danger or annoyance of the

neighbours or passengers, and the owner thereof may be indicted.—*Dy.* 25.

An action will also lie against a man for keeping a dog *accustomed* to bite sheep, provided it can be proved that the owner knew him to be guilty of such a practice; and it has been held, that the having killed or wounded sheep *twice* before, is sufficient proof of his being so accustomed, (*Dy.* 236) but *quære* whether the owner ought not to destroy him after the *first* offence.

It seems that no action can be brought for damages against the owner of a dog for biting a person, unless the owner had notice of his having bit somebody at least *once* before.—12 *Mod.* 555.

If another man's dog fall upon mine to worry him, I am not justified in killing him, unless there be danger of his materially injuring my dog, and I cannot save him in any other way.—3 *Salk.* 139.

CHAP. XIV.

Concerning the committing of Trespass in the Pursuit of Game.

IN the heat of pursuit after game, few sportsmen are so cautious as at all times to refrain from unlawfully trespassing on the grounds of another, and by that means
 subjecting

subjecting themselves to an action for damages; we cannot, therefore, we think, conclude our treatise on the Game Laws, in a manner more acceptable to our readers, than by some observations on the law of *Trespass*.

Trespass, in the sense wherein we are now to consider it, is the entry on another man's ground without his leave, and doing some damage to his real property; every such entry, however inconsiderable the damage done, is considered by the law, (unless in particular cases) as an injury for which an action of trespass will lie, and for which a satisfaction is recoverable according to the malicious intent of the trespasser, and the damage actually committed. These actions were formerly carried to an iniquitous length, and in the hands of ill-natured persons frequently became oppressive engines of malice against those who had committed a trespass from pure ignorance or inadvertency, and who, if only one shilling damages was given, were saddled with the whole costs of suit. In order, therefore, to prevent these trifling and vexatious actions, it is enacted, (amongst other things) by 43 Eliz. c. 6. and 22 and 23 Car. 2. c. 9. §. 136, that where the jury who try an action of trespass give less damages than *forty shillings*, the plaintiff shall be allowed no more costs than damages, unless (by 8 and 9 Will. and Mary, c. 11.) it shall appear that the trespass was

wilful and *malicious* (a), and is so certified to be by the judge; in which case the plaintiff shall recover *full costs*.

Besides the above statutes, we have seen (b) that by 4 and 5 Will. and Mary, c. 23. s. 10. every *inferior tradesman*, apprentice, or other *dissolute person* (c), may be sued for going upon another man's ground to hunt, &c. *though he do no injury to the soil*, &c. and if found guilty, shall pay *full costs* of suit.

It is also further provided by 23 Eliz. c. 10. that *no person* shall *hawk*, or *hunt with spaniels*, in any ground where there shall be corn or grain, which shall be *eared* or *coddled*, until the same shall be shocked, cocked, hiled, or cropped, upon pain of forfeiture for every time he shall so hawk or hunt, (without the consent of the owner of the corn, &c.) the sum of 40s. to the owner of the said corn or grain.

Under these statutes relating to trespasss, *qualified* as well as *unqualified* persons are equally included. A lord of a manor, therefore, even within his own manor, cannot come upon another man's ground without being a trespasser, and he shall

(a) A trespass is considered as *wilful*, where the person has been forewarned not to come upon the land; and *malicious*, where the trespass is committed plainly with an intent to vex and distress the plaintiff.

(b) P. 18.

(c) *Ibid*, note (b).

pay

pay like costs with another person, under similar circumstances, as if warning be given, as mentioned p. 50, note (a), a lord of a manor, or other qualified person, will be considered as a *malicious* trespasser, and liable to pay *full* costs, though the damage given be *under* 40s.—2 *Bac. Abrid.* 613.

If, however, a lord of a manor have a grant of *free warren*, (which he sometimes has) over another man's grounds, he may justify sporting within his own franchise, though the ground be not his; in no other respect has he any greater privilege than other qualified persons.—*Ibid.*

But in some few cases where the public benefit is concerned, the law *excuses* a trespass, as when done in pursuit of *badgers*, *foxes*, and other beasts of prey, because the destroying such animals is for the public good; but in doing this, no more damage must be done than is necessary and inevitable. (1 *Term Rep.* 338.) So that in the case of hunting a *badger* or *fox*, a man cannot justify *breaking the soil* to drive him out of the earth; for though the law allows the hunting of noxious animals for the public benefit, yet it must be done in the usual and ordinary manner, and not to the destruction of another's freehold.—8 *Co.* 146.

Having now taken notice of every thing we think material on the subject of game, we shall take our leave with observing,
 3 that

that if any of our readers should avail himself of our labours, we hope it will be in *defence of himself*, and not (as has been too often done) to the *oppression of others*.

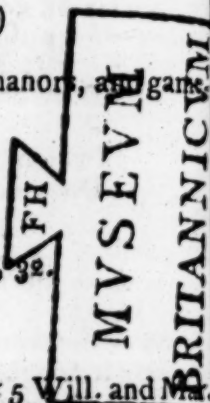
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